



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

November 24, 2014

Ms. Erica Spinelli
NAVFAC BRAC PMO West
1455 Frazee Road, Suite 900
San Diego, California 92108-4310

Subject: Draft Environmental Impact Statement for the Disposal and Reuse of the Former Naval Weapons Station Seal Beach Detachment Concord, Concord, California (CEQ# 20140289)

Dear Ms. Spinelli:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act. Our detailed comments are enclosed.

The Draft Environmental Impact Statement (DEIS) assesses the impacts of the Navy's disposal of surplus property at the former Naval Weapons Station Seal Beach Detachment Concord and subsequent redevelopment of the property by the City of Concord. The preferred alternative is the development plan adopted in 2012 by the City of Concord in the Concord Reuse Project Area Plan. The approved development plan supports transit oriented development around the North Concord/Martinez BART Station where higher intensity uses are planned, transit use in other developed areas of the site, and includes open space, greenways, and a bicycle network. EPA recognizes and supports the transit-oriented focus and open space preservation components of the proposed development. Nevertheless, we believe that the environmental impacts of the project warrant further consideration and mitigation.

Based on our review, we have rated the DEIS's preferred alternative as *Environmental Concerns – Insufficient Information* (EC-2) (see enclosed "Summary of Rating Definitions"). The development plan would remove 22 acres of wetlands, which would eliminate their important values to fish and wildlife, and their functions as storage areas for flood flows, groundwater recharge, nutrient recycling, and water quality improvement. We understand that the City of Concord will apply for a Clean Water Act Section 404 permit from the Army Corps of Engineers. EPA will work with the Corps when the Clean Water Act Section 404 permit is proposed to help ensure that these impacts are minimized. Please see our attached recommendations for improving the disclosure of impacts and regulatory processes in the Final EIS. We understand that all mitigation for impacts of the proposed project will be the responsibility of the City of Concord. Since impacts to air quality are described in the DEIS as significant, we recommend that the City ensure that robust air quality mitigation measures are implemented, and we encourage the Navy to work with the City to secure appropriate commitments to such measures.

EPA appreciates the opportunity to review this DEIS. When the Final EIS is released for public review, please send one copy to the address above (mail code: ENF-4-2). If you have any questions, please

contact me at (415) 972-3521, or contact Karen Vitulano, the lead reviewer for this project, at 415-947-4178 or vitulano.karen@epa.gov.

Sincerely,

Kathleen Martyn Goforth

Kathleen Martyn Goforth, Manager
Environmental Review Section

Enclosure: Summary of EPA Rating Definitions
EPA's Detailed Comments

cc: Jane M. Hicks, Army Corps of Engineers
Michael W. Wright, City of Concord

SUMMARY OF EPA RATING DEFINITIONS

This rating system was developed as a means to summarize EPA's level of concern with a proposed action. The ratings are a combination of alphabetical categories for evaluation of the environmental impacts of the proposal and numerical categories for evaluation of the adequacy of the EIS.

ENVIRONMENTAL IMPACT OF THE ACTION

"LO" (Lack of Objections)

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

"EC" (Environmental Concerns)

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

"EO" (Environmental Objections)

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

"EU" (Environmentally Unsatisfactory)

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

ADEQUACY OF THE IMPACT STATEMENT

Category 1" (Adequate)

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

"Category 2" (Insufficient Information)

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analysed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

"Category 3" (Inadequate)

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analysed in the draft EIS, which should be analysed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640, "Policy and Procedures for the Review of Federal Actions Impacting the Environment."

Wetlands and Waters of the U.S.

The proposed development plan would fill approximately 16.1 acres of jurisdictional wetlands, including freshwater marsh and seasonal wetlands; 6 acres of non-jurisdictional wetlands; and approximately 8,716 linear feet of streams that lie within the development footprint (p. 4-168, 4-174). We have concerns with this level of impact from the direct fill of wetlands and streams, as well as the indirect impact of adding over 1,100 acres of new impervious surface to the watershed¹. The DEIS references a Master Clean Water Act Section 404 permit that would establish the city as the responsible party for U.S. Army Corps of Engineers (USACE) permitting requirements. There is no “Master” 404 permit within Clean Water Act Section 404 permitting options, and the DEIS may be referring to a Regional General 404 permit.

Before issuing a 404 permit, the USACE will have to determine that impacts have been avoided and minimized to the maximum extent practicable. The information in the DEIS does not demonstrate that the City’s redevelopment plan is the Least Environmentally Damaging Practicable Alternative per Section 230.10(a) of the EPA 404(b)(1) Guidelines. It appears that additional avoidance is possible. In addition, the 404 permit must include compensatory mitigation requirements for unavoidable impacts, in compliance with the 2008 Federal Mitigation Rule. EPA will provide additional comments on specific development proposals through the USACE Public Notice process.

Recommendation: We recommend that the following information be included in the FEIS:

- Clarify in the FEIS whether the “Master” 404 permit refers to a Regional General 404 permit. Indicate the status of the permit and describe the process whereby the City would comply with USACE permitting requirements.
- In Section 3.14.1.2, discuss the EPA 404(b)(1) Guidelines and how the USACE uses them to evaluate proposed permits, as well as the 2008 Federal Compensatory Mitigation Rule. This section currently only discusses the jurisdictional determination process in any detail, but that is only the first step in the permitting process.
- In Sections 4.14.1.2 and 4.14.2.2, state that, under the 404(b)(1) Guidelines, impacts to waters of the U.S. must be avoid and minimized to the maximum extent practicable. Compliance with this requirement will be evaluated by the USACE, independent of City approvals, during 404 permitting.
- Explain how the City plans to mitigate for impacts to 22 acres of wetlands and fill of over 1.5 miles of streams. For example, will mitigation be provided within the plan area, within the same watershed, outside the watershed, or through mitigation banks, etc.? It is not sufficient disclosure to say only that developers will have to comply with state and federal regulations.
- Clarify whether the “Concentration & Conservation” alternatives evaluated in the City’s CEQA document were considered in the DEIS.

¹ Full project estimate is 1,442 acres of impervious surface; 359 acres currently exist (p. 4-169)

Water Quality

Mt. Diablo Creek, which bisects the site, is listed as impaired on the Clean Water Act Section 303(d) list due to the pesticide diazinon (sources: urban runoff/storm sewers) and toxicity from an unknown source (p. 3-210). The DEIS states that this impairment is being addressed by an EPA-approved Total Maximum Daily Load (TMDL), but does not discuss those efforts nor how the project would affect them. The project would add approximately 1,100 new acres of impervious surface, with development adjacent to Mt. Diablo Creek, and introduce new sources of urban runoff in the Mt. Diablo Creek watershed. The DEIS concludes that impacts to surface water quality would not be significant and that creek enhancements and channel restoration from the temporary impacts of development would result in beneficial impacts to water quality (p. 4-178).

Recommendation: We recommend that the Final EIS describe existing restoration and enhancement efforts for Mt. Diablo Creek under the TMDL and how the proposed development would be coordinated with those efforts. Identify whether permeable pavement would be used and if this would reduce impacts to surface water quality, and discuss how urban pesticide runoff from new development would be prevented.

Hazards and Hazardous Substances

The DEIS provides a good summary of the areas of contamination and the cleanup actions being taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund. Since cleanup actions are ongoing, we recommend that the Final EIS include updates on the status of the cleanup actions at the CERCLA and Environmental Restoration Program sites.

In addition, we have the following recommendations for the Final EIS:

- For sites under review as part of the Preliminary Assessment Re-verification Investigation (PA/RVI), refrain from categorizing them in Tables 3.8-1 and 4.8-1 as “Closed or No Further Action”. This is especially relevant for the Runway Apron Fuel Pit and Red Rock Disposal Area sites for which the Navy is recommending additional action.
- For sites with existing active remediation systems, particularly for groundwater and soil gas, that are likely to extend past land transfer, identify the associated institutional controls (ICs) in Table 4.8-1 instead of stating “not yet specified”. IC’s for these sites should, at a minimum, include not disturbing remediation equipment, and allowing access to equipment for maintenance, etc.
- Indicate at which sites contaminated groundwater is likely to be encountered during construction dewatering and describe any particular considerations necessary for proper management, treatment and disposal (p. 4-177)
- On page 4-78, the DEIS states that the City will require the developer to have a remediation plan that has been approved by applicable environmental regulatory agencies. Clarify the process for regulatory review of the remediation plan and what kinds of issues it would address, since the cleanup is likely to be complete for most sites once development would occur.

Mitigation of Air Quality Impacts

The DEIS identifies significant air quality impacts for both the construction and operations phases of the project (pp. 4-33 – 4-34). For construction mitigation, it states only that all feasible construction activity control measures will be applied at the site. We were unable to find any specific references to these measures in the DEIS or the Concord Reuse Project Area Plan.

Recommendation: We recommend that the FEIS identify the suite of mitigation measures that the City would deem feasible and require during construction. We recommend that the City include a requirement to utilize Tier 4 engines for project construction equipment to the maximum extent feasible.

For mitigation of operational emissions, the DEIS states that wood-burning fireplaces would be banned or required to employ best available control technologies, and that households with wood-burning fireplaces would comply with Spare the Air Day restrictions. While EPA Phase 2 Qualified fireplaces are approximately 70% cleaner than unqualified models², they still represent a substantial new pollutant source when applied to 12,272 new housing units. We note that, in addition to the health effects caused by particulate matter pollution, wood smoke contains black carbon, a greenhouse gas³.

Recommendation: We recommend that the City prohibit the installation of wood-burning fireplaces for the project. If wood-burning fireplaces are not prohibited in the project development, we recommend that the FEIS provide estimates of greenhouse gases and black carbon emissions that would result from the operational phase of the project. Since it is difficult to predict compliance with Spare the Air Day restrictions, we recommend eliminating that as a mitigation measure.

² <http://epa.gov/burnwise/fireplaces.html>

³ <http://epa.gov/blackcarbon/>